

## EDUCATION AND LOCAL GOVERNMENT COMMITTEE

Subcommittees Meet...Two subcommittees of the Education and Local Government Committee met on Jan. 9. Below is a summary of each subcommittee's deliberations.

Local Government Subcommittee...Realtors, planners, surveyors, engineers, smart growth advocates, and local governments all weighed in on potential changes to the Subdivision and Platting Act at the Jan. 9 meeting of the Local Government Subcommittee. HJR 37 directs the subcommittee to review the provisions of Title 76, chapter 3, MCA, and, if necessary, make "recommendations for legislation to facilitate the consistent application of the laws by revising that chapter in a way that is clear, concise, logically organized . . ."

The subcommittee is gathering information that will help members to make informed recommendations for legislation.

In October, the subcommittee decided to learn more about pre-application consultation that takes place between local government planners and prospective developers. Pre-application consultation is not required in law and is handled differently by different jurisdictions. On behalf of the subcommittee, the Montana Association of Planners surveyed its membership, asking the following five questions:

1. Does your city or county have a pre-application process for subdivision applications (major and minor)?
2. If you have a pre-application process, is a pre-application meeting required prior to submitting a subdivision application?
3. How does the pre-application process work?
4. Do you think your pre-application process helps reduce the length of time it takes for an application to make its way through subdivision review?
5. Do you think that the pre-application process saves staff time?

The overwhelming majority of planners who responded to the survey answered that they do conduct pre-application consultations in some form and that it is beneficial for the both the developer and the staff because potential problems may be identified before formal review has begun. Depending on the jurisdiction, the meeting occurs when requested by the applicant or at a set time every week, either in the planning office or on the site of the proposed development. One planner commented that a pre-application meeting is a waste of time for simple projects proposed by developers who are familiar with the process and that problems have to be identified and corrected at some point, and it doesn't make much difference when that occurs. The subcommittee is considering

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## REVENUE AND TRANSPORTATION COMMITTEE

Committee to Meet Valentine's Day Eve...The Revenue and Transportation Committee is meeting Feb. 13 at 9 a.m. in Room 102 of the state Capitol. The committee's agenda covers a wide variety of topics including:

- SJR 29 (study of the taxation of electrical generation property) reports from the Department of Revenue, Avista Corp., and committee staff on the valuation of electrical generation property;
- a report on the use of a collection agency by the Department of Revenue for delinquent taxes;
- a required report from DOR on the tax credit for contributions to a charitable foundation;
- a required report from the Department of Commerce on Montana capital companies;
- background information on class eight business equipment, trends in corporation income taxes, and the taxation of Internet access;
- a presentation from the Montana Department of Transportation on economic analysis for project selection;
- MDT updates on highway safety and ethanol tax incentives.

In the Loop...For more information about the committee, its work plan, or agendas, please visit the website (<http://www.leg.mt.gov> and follow the "Committees" links), or contact Jeff Martin at (406) 444-3595 or [jmartin@mt.gov](mailto:jmartin@mt.gov) or Leanne Kurtz at (406) 444-3064 or [lekurtz@mt.gov](mailto:lekurtz@mt.gov).

whether to recommend that pre-application consultation be addressed in draft legislation.

At its October meeting, the subcommittee also heard testimony about problems encountered in subdivision review and asked interested parties to submit their suggestions for changes to the Act. The subcommittee received written responses from the Montana Association of Realtors; Myra Shults, a Missoula attorney who has represented counties in litigation involving subdivisions; the Ravalli County Planning Department; the Flathead County Planning and Zoning Office; the Montana Smart Growth Coalition; and G. Stewart Nash, a registered land surveyor. At the January meeting, respondents discussed their proposals and answered questions. The subcommittee wanted to begin to identify changes to the Act and the process on which the groups may agree. A number of those were highlighted, as were areas that remain contentious.

Interested individuals and organizations will continue to develop areas of agreement and better define those that are in dispute. When the subcommittee meets on April 2, members expect to review the remaining contentious issues and will begin to decide how to shape the legislation that will likely result from their efforts on the HJR 37 study.

For more information on the HJR 37 study or to review documents from the meetings, please contact Leanne Kurtz, HJR 37 staff, at (406) 444-3593 or via e-mail at [lekurtz@mt.gov](mailto:lekurtz@mt.gov). Many of the documents are also on the Education and Local Government Committee's website noted below.

K-12 Education Subcommittee...A roundtable discussion on a statewide health insurance pool for school district employees highlighted the meeting of the K-12 Education Subcommittee. Roundtable participants included representatives from the governor's office, educational organizations and school districts, a county superintendent, and an insurance agent. The discussion centered on such issues as mandatory participation by districts, mandatory enrollment of district employees, inclusion of part-time and classified employees, multiple health plans, cost containment, and administration.

MEA-MFT is working on health insurance legislation similar to SB 226 that was proposed to the 1997 Legislature. MEA-MFT will hold meetings with its local units beginning in February. Following those meetings, MEA-MFT is willing to meet with other interested parties to work on the legislation. The suggestion was made that a "deal-breaker" meeting be held at which all of the interested parties would have an opportunity to lay out what provisions of a statewide pool they could support and what provisions they could not. The subcommittee agreed to facilitate the discussion between the interested parties and MEA-MFT on the legislation. If MEA-MFT and the interested parties can come to an agreement on legislation, the subcommittee will consider recommending the legislation to the full committee for possible sponsorship.

Next Meeting April 2...The subcommittee will meet again on Friday, April 2 to continue its work on a health insurance pool proposal.

For more information about the K-12 Education Subcommittee, please contact Connie Erickson at (406) 444-3078 or by e-mail at [cerickson@mt.gov](mailto:cerickson@mt.gov). Meeting agendas, minutes, and other related materials are on the Education and Local Government Committee website at "<http://leg.mt.gov>". Just click on "Committees", then click on "Interim".

## POSTSECONDARY EDUCATION POLICY AND BUDGET SUBCOMMITTEE

Subcommittee Organizes in December... The Postsecondary Education Policy and Budget Subcommittee of the Education and Local Government Committee held its first meeting on Dec. 10, 2003. Subcommittee members include Sen. Greg Barkus, chair; Rep. Sue Dickenson, vice chair; Sen. Debbie Shea; and Sen. Don Ryan. Board of Regents members Mark Semmens and John Mercer are also members of the subcommittee.

The subcommittee voted to explore ways for the Montana university system to take a greater leadership role for economic development in Montana. The subcommittee directed staff to brainstorm with legislative staff of the Economic Affairs Committee, the Office of the Commissioner of Higher Education, and the Governor's Office of Economic Opportunity and to develop a proposal for a process to implement this idea. The subcommittee also asked the governor to appoint Dave Gibson, Montana's chief business officer, to serve on the subcommittee.

Subcommittee Considers Proposal in January...On Jan. 10, staff presented a draft proposal that outlines a process for the Montana University System to take a greater leadership role for economic development in the state. The subcommittee endorsed the concept. The proposal was also presented to the Montana Board of Regents and the Legislative Council in January, and both entities also endorsed the concept.

The proposal calls for a leadership group, comprised of leaders from the legislative and executive branches as well as leaders from business, education, and other organizations, that will provide oversight and direction for the project. A project team, consisting of people designated by the leadership group, will conduct the actual policy research and develop recommendations or options for review by the leadership group. Progress reports will be presented to the subcommittee and to the Economic Affairs Interim Committee, Legislative Council, governor, and Board of Regents.

The subcommittee directed staff to work with the Governor's Office of Economic Opportunity and the Office of the Commissioner of Higher Education to find out how other states have successfully leveraged the talent and resources of its higher education systems to significantly contribute toward economic development. In particular, the subcommittee identified the following priorities for:

- expanding access to postsecondary education
  - distance education
  - deed-based financial aid;
- expanding workforce development and responsiveness;
- commercialization of promising technologies developed through university research;
- improving leadership for providing technical assistance to small or start-up businesses that have historically provided the majority of new jobs in any state's economy; and
- expanding university system public service by working with state policy makers to understand and help solve state issues.

Next Meeting Scheduled for March 24... At the invitation of the regent members, the subcommittee will meet with the Board of Regents one day prior to the regents' next regularly scheduled meeting in Dillon.

For more information about the meeting, please contact Pam Joehler at (406) 444-5386 or send an e-mail to [pjoehler@mt.gov](mailto:pjoehler@mt.gov). Meeting information is also posted on the subcommittee's website at <http://leg.mt.gov>. Just click on "Committees" and follow the links to the Education and Local Government Committee, Postsecondary Education Policy and Budget Subcommittee.

## ENERGY AND TELECOMMUNICATIONS COMMITTEE

Comments on Montana Universal System Benefits Programs Due Feb. 23... The Energy and Telecommunications Interim Committee is seeking ideas and comments on options to revise the universal system benefits (USB) programs for natural gas and electricity. A draft *Universal System Benefits Program Workbook* may be reviewed on the committee's website or obtained from committee staff. Please submit your comments to Mary Vandembosch, committee staff, by Feb. 23, 2004. (See "Want to Participate?" below for details.)

Universal system benefits charges are collected from electricity and gas customers and are used to pay for:

- bill discounts and weatherization for low-income Montanans;
- renewable energy projects;
- cost-effective energy conservation;

- research and development programs related to energy conservation and renewable energy; and
- programs designed to encourage competitive markets for these types of programs and projects.

Specific aspects of the USB programs that are under consideration include:

- the amount of the USB charge;
- the use of the funds collected, including the allocation of funds among programs; and
- the disposition of universal system benefit funds.

Last November, the committee requested that a bill be drafted to extend the USB charge assessed on electricity consumers until 2009. Under current law, the charge expires at the end of 2005.

Read About January Meeting in March Issue...The Energy and Telecommunications Interim Committee met on Jan. 29 and 30. Coverage of that meeting will appear in the March issue of **THE INTERIM**.

Want to Participate?... An interim meeting schedule, agendas, meeting materials, and other information may be viewed on the committee's website. To get to the website, type "<http://leg.mt.gov>," click on "Committees," then click on "Interim." Contact Mary Vandembosch at (406) 444-5367 or [mvandembosch@mt.gov](mailto:mvandembosch@mt.gov) for more information or to be added to a mailing list.

## LEGISLATIVE COUNCIL ON RIVER GOVERNANCE

Overview and Purpose...The Legislative Council on River Governance includes representatives of the Montana, Idaho, Oregon, and Washington legislatures. The council was first convened in 1998 by legislators who agreed that it was important to assert state legislative authority over river governance in the Columbia River Basin.

Four Montana legislators serve on the Legislative Council on River Governance: Sen. Bill Tash, Sen. Bea McCarthy, Rep. Steve Gallus, and Rep. Ron Stoker.

Montana has several interests that Montana's delegation hopes to protect through regional efforts:

- Continued preference for low cost power from the Bonneville Power Administration (west of the Continental Divide).

- Influence over the operation of the Hungry Horse and Libby dams. Water has been released from these dams to achieve downstream benefits to the detriment of Montana's interests.
- Protection of Montana's fish and wildlife, including the endangered white sturgeon and threatened bull trout. At the federal level, protection of salmon has been given greater emphasis than protection of Montana's endangered species. Certain management practices benefit the salmon at the expense of Montana's fish.

Getting in the Loop... The council meets infrequently; the last meeting was held in Sept. 2002. Anyone who would like to be notified of meetings should contact Mary Vandenbosch at (406) 444-5367 or [mvandenbosch@mt.gov](mailto:mvandenbosch@mt.gov). Because meetings that involve legislators from four states must sometimes be changed on short notice, those with e-mail are encouraged to provide an e-mail address.

## SJR 32 SUBCOMMITTEE ON MEDICAL LIABILITY INSURANCE

Endurance Tested During Marathon Session... The SJR 32 Subcommittee, created by the Legislative Council and commissioned to study medical liability insurance issues, met on Jan. 15, in a marathon-type, 11-hour meeting. The subcommittee focused on gaining a better understanding of medical liability underwriting practices, including the actuarial underpinnings of insurance underwriting for medical liability. Members and visitors participated in a seminar, of sorts, on medical liability underwriting conducted by insurance actuary Mark Crawshaw, Madison Consulting Group. The subcommittee also heard testimony from Dr. Richard E. Anderson, chairman and CEO of The Doctors' Company and from Martin J. Osowski, president and CEO of Utah Medical Insurance Association. Subcommittee members and industry officials discussed the factors related to underwriting decisions and actuarial assumptions. The subcommittee was informed that premiums for medical liability insurance are primarily predicated on:

- units of exposure (such as hospital beds or patients treated, by type of treatment);
- base rate (per unit of exposure);
- adjustments (such as the amount of deductible and the maximum limits of the policy); and
- an experience adjustment (individualized for the facility, practitioner, jurisdiction, etc).

It was also noted that due to the relatively small market that Montana represents, premiums paid by facilities and practitioners in the state are affected by

regional or national factors, with premiums for some facilities and practitioners being significantly affected, typically in a negative way.

The subcommittee's work session resulted in, among other things, directions to staff to compile and list the range of perceived problems and options. At its next meeting, the subcommittee will identify from this list priorities for further research, analysis, and consideration. Once compiled, the list--which will likely expand from time to time--will be distributed to the subcommittee and will be posted to the subcommittee's website for the benefit and convenience of other stakeholders.

March Meeting Scheduled... The subcommittee is scheduled to meet Thursday, March 25 at the state Capitol. Please check the subcommittee's website periodically for more details of the subcommittee's meetings, past and future. You may also contact Dave Bohyer, subcommittee staff, at the Legislative Services Division by phone at (406) 444-3064 or by e-mail at [dbohyer@mt.gov](mailto:dbohyer@mt.gov).

## ENVIRONMENTAL QUALITY COUNCIL

Talk About Endurance!...The Environmental Quality Council (EQC) started 2004 with a marathon 3-day session in January. Subcommittees met on Jan. 13 and the EQC met on Jan. 14 and 15. Coverage of the subcommittees' work is found below.

The unusual 3-day meeting was primarily due to the EQC's decision to review and evaluate a wide variety of significant water policy issues this interim, guided in part by the issues raised in the HJR 4 study resolution to review water management practices in the state.

The EQC is scheduled to meet March 9 and 10 in Room 102 of the state Capitol. For those long-range planners, please note that the EQC rescheduled its July meeting from July 22 and 23 to July 19 and 20.

Minutes of past meetings, draft meeting agendas, and other information about the Environmental Quality Council are available on the EQC website at [http://www.leg.mt.gov/css/lepo/2003\\_2004/default.asp](http://www.leg.mt.gov/css/lepo/2003_2004/default.asp) by calling (406) 444-3742, or by emailing [eqc@mt.gov](mailto:eqc@mt.gov).

Council Wades into Water Policy Issues... At the January meeting, several panels provided view points on a variety of complex water issues. One panel reviewed water policies and the water adjudication program in Idaho. Officials from the Montana Department of Natural Resources and Conservation (DNRC) presented information, as requested by HJR 4, on the status of water supply and distribution mechanisms in Montana. The EQC reviewed the relative merits and liabilities of state-owned dam operation and maintenance.

Water adjudication is the key water policy issue that has drawn the attention of the EQC this interim. Because of the scope and complexity of adjudication, the EQC has divided the topic into manageable segments to address, as necessary. Colleen Coyle, a water master with the Montana Water Court and Jim Gilman, the adjudication

project manager at DNRC, discussed how District Courts enforce water decrees in Montana. Coyle and Gilman gave examples of basins that are currently operating under an enforcement structure.

Water users from the Musselshell Basin described how the enforcement process is working in that basin. They explained that enforcement was critical to protecting other water users' property rights. The EQC also heard about the level of accuracy in the water adjudication process. The accuracy of statewide adjudication is critical to the defensibility of the program in the event the adjudication is later challenged by downstream states or other interested parties. To help the EQC better understand the possible alternatives for addressing the accuracy question, a panel representing an on motion position, a current process position, an institutional objector position, and a water user perspective discussed the merits of various methods designed to verify water rights claims in order to obtain an accurate statewide adjudication.

The Montana Compact Commission described how it negotiates federal and Indian reserved water rights. The commission has successfully negotiated several settlements between the state and federal entities, thus avoiding costly water rights litigation. The EQC discussed the new *Water Rights Handbook* that is being prepared in conjunction with DNRC. The purpose of the handbook is to provide useful information on Montana's water rights law to water users and the general public in an understandable manner.

The EQC also reviewed some water quality issues. The Montana Department of Environmental Quality presented an update on how it plans to complete Total Maximum Daily Load calculations for impaired surface waters in order to meet court imposed deadlines. The EQC also heard an update on the status of Montana coal bed methane development litigation and a discussion about the relationship, if any, between TMDLs and CBM. The Montana Board of Oil and Gas provided information on current CBM activity in Montana and on other board activities. A panel discussed the importance of promoting cooperation between Montana and Wyoming to resolve CBM development and water quality issues affecting both states.

The EQC is soliciting public comment and information on water policy issues until June 30, 2004, through the use of its online feedback form. The form is available through the EQC website or at the following address: <http://www.leg.mt.gov/hjr4.asp>.

The EQC website also contains numerous papers presented to the EQC regarding water policy issues. For additional information on water policy issues, please contact Krista Lee Evans at [kevans@mt.gov](mailto:kevans@mt.gov) or (406) 444-1640.

Other Topics...Dr. Michael Spence and epidemiologists from the Montana Department of Public Health and Human Services provided information about a three-year, federally funded multi-agency project that will study the possible relationships between environmental conditions and human health. Environmental data from natural resource agencies will be compared with health impact data from medical and health agencies. A panel of representatives from metal mines, agency staff, surety representatives, and public interest groups reviewed current procedures for calculating metal mine reclamation bonds.

EQC Energy Policy Subcommittee...The Energy Policy Subcommittee met in Helena on Jan. 13. Three separate panels discussed recent developments related to hydrogen fuels, ethanol, and distributed wind energy. PowerPoint presentations used during the panel discussions are on the subcommittee's website noted below. Based on the topics covered in the panel discussions, the subcommittee decided that at its next meeting it will:

- investigate the obstacles to hydrogen, ethanol, wind, and biodiesel development;
- investigate why commercial wind farms have not been developed in Montana;
- analyze other states' legislation on incentive programs for ethanol, hydrogen, and wind production;
- evaluate the current ethanol incentive structure in Montana;
- analyze the use of the coal tax trust as security for underwriting or otherwise promoting alternative energy in Montana;
- review the legislative history of House Bill 377 and Senate Bill 422 and investigate why both bills failed to pass during 2003 legislative session;
- inventory current Montana law on incentives for alternative energy production;
- evaluate the feasibility of allowing the Montana Board of Investments to directly lend money for alternative energy projects;
- analyze federal production tax credits for alternative fuels; and
- evaluate the need for a state energy plan with regard to alternative fuels.

Next Meeting in March...The Energy Policy Subcommittee is scheduled to meet on March 9 in Room 137 of the state Capitol. For more information about the subcommittee, contact Todd Everts at 444-3747 or [teverts@mt.gov](mailto:teverts@mt.gov) or visit the subcommittee's website at: [http://www.leg.mt.gov/css/lepo/2003\\_2004/subcommittees/energy\\_group/default.asp](http://www.leg.mt.gov/css/lepo/2003_2004/subcommittees/energy_group/default.asp)

EQC Agency Oversight Subcommittee...The Agency Oversight Subcommittee met in Helena on Jan. 13. In a wide-ranging list of oversight topics, the subcommittee reviewed statutory provisions related to legislative involvement in agency rulemaking, efforts to alter the federal non-attainment designation for carbon monoxide and particulate in the Missoula airshed, and the of Fish, Wildlife, and Parks Department's

progress in developing state management plans for possibly too few sage grouse and arguably too many elk.

A panel of state, local, and insurance company experts offered solutions and provided suggestions for addressing fire hazards in the interface between forest lands and residential property. A panel of health, environmental, and law enforcement officials discussed whether Montana needs to develop standards for the cleanup of private property contaminated by methamphetamine labs.

The subcommittee is tracking four court cases that allege violations of the Montana Environmental Policy Act, or MEPA, and it is also reviewing the relevance of each of the EQC's statutory duties. The Department of Environmental Quality presented an update of its remediation requirements for the former Missoula White Pine Sash property now that portions of the former wood treating and manufacturing property are being proposed for residential housing development.

Next Meeting Scheduled for March...The Agency Oversight Subcommittee is scheduled to meet on March 9 in Room 102 of the state Capitol. For further information on subcommittee activities, contact Larry Mitchell, staff, at (406) 444-1352 or lamitchell@mt.gov.

## LEGISLATIVE COUNCIL

Council Approves Audio Minutes Pilot Project for Next Session and Does Some Other Stuff...At its January 16, 2004, meeting, the Legislative Council:

- established a working group to explore legislative opportunities for using interactive video;
- allocated \$5,000 for Montana members to participate in the activities of the Legislative Council on River Governance;
- received a progress report from the SJR 32 Subcommittee on Medical Liability Insurance;
- reviewed proposed changes to the Legislative Council's Rules of Procedure concerning bill drafting;
- approved changes to the process used by interim committees to review agency legislation;
- discussed next steps in addressing action items identified at its September planning session;

- heard staff reports on the 2003 video minutes pilot project, recent court challenges to state statutes, Legislators Back to School Week, FY2006-FY2007 budget process and development, and state revenue collections and expenditures; and
- approved an audio minutes pilot project for the 2005 session. Under this proposal, the audio portion of all meetings conducted by committees assigned to two designated Senate hearing rooms and two designated House hearing rooms would be broadcast live via the Internet (audio streaming). Simultaneously, the audio stream would be recorded to a file server. Following each committee meeting, an audio clip of the meeting would be created, and a link to the audio clip would be posted to the Legislative Branch website. After the link to the audio clip was available, users would be able to access the audio minutes at any time via their computers.

Party Caucus and Other Dates Approved...The council adopted the following dates for the pre-2005 session activities:

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| • Senate and House party caucuses          | Wednesday morning, Nov. 17, 2004          |
| • Continuing education for all legislators | Wednesday afternoon, Nov. 17, 2004        |
| • Orientation for new legislators          | Thursday and Friday, Nov. 18 and 19, 2004 |

Contact the Council...For more information about the Legislative Council, call Lois Menzies at (406) 444-3066 or send an e-mail message to lomenzies@mt.gov

## LAW AND JUSTICE COMMITTEE

Committee to Take Up Public Defender Issues in March...The Law and Justice Committee is scheduled to meet March 4 (rescheduled from Jan 8) to focus almost entirely on public defender issues. The committee will consider whether it should develop legislation to centralize at the state level the management of public defender services, or whether to clarify current law and allow the Legislature to get a better idea of what is happening with district court costs (including indigent defense) since state assumption of nearly all of those costs in 2003. The agenda for the meeting will include:

- information from other states;

- a fiscal report on the state-funded district court program, in general, and indigent defense costs, in particular;
- a panel of public defenders with experience related to the three ways public defender services are now provided in the state: through county public defender offices, under a county contract, or by direct court appointment; and
- an issues and options check list with a staff report that analyzes each issue and option presented for the committee's consideration and action.

There are essentially three basic courses of action the committee could take at the meeting:

- no significant change from current practice, other than clarifying and addressing the fiscal and program issues that are part of the overall district court assumption;
- modest but clear changes that would shore up, coordinate, and standardize existing methods for providing public defender services; and
- significant changes that would include the establishment of a new state public defender office with a chief state public defender.

There are several issues and options related to each of these approaches, and staff will provide a checklist of these for the committee's discussion and action. The decisions made at this meeting will set the course for the remainder of the interim with respect to the committee's study of public defender issues and the recommendations it may make to the legislature.

For more information about the Law and Justice Committee, please contact Sheri Heffelfinger at (406)444-3596 or by e-mail at [sheffelfinger@mt.gov](mailto:sheffelfinger@mt.gov). Meeting agendas, minutes, and other related materials are on the committee's website at "<http://leg.mt.gov>". Just click on "Committees", then click on "Interim".

## ECONOMIC AFFAIRS COMMITTEE

Joint Committees Seek Congressional Delegation Action on Banking Rules...After a joint informational session Jan. 23, in which the Economic Affairs Committee and the State Administration and Veterans Affairs Committee heard from federal and state financial regulators, the committees voted separately to ask Montana's congressional delegation to urge Congress to review a new banking rule that would preempt most state laws from applying to national banks or their affiliates. Annie Goodwin, Montana's commissioner of Banking and Financial Institutions, said that state

input was essential to get Congress to review the preemption rule published in January by the U.S. Office of the Comptroller of the Currency. The vote was unanimous in each committee.

The OCC rule would bar the enforcement of state laws that in the past may have applied to national banks, such as consumer protection laws. Cort Jensen, who heads the Consumer Protection Office, Department of Administration, said that his office will intervene on behalf of a Montana resident who has trouble with a bank in Montana, regardless of whether the bank is a federally chartered or state-chartered institution. Most residents, he said, do not know if their bank is a national or a state bank, but they assume that the bank is under state law. Jensen said that with the OCC's new preemption rule in effect--the rule will become official in February--his office will not be able to contact national banks if, for example, that bank misapplies a mortgage payment to a car loan. The national bank customer would have to contact the OCC's satellite office in Billings.

Questions during the joint meeting focused on what impact the rule change--and other changes to banking in general--might have on capital access in Montana. Other questions centered on concerns that federal law was attempting a one-size-fits-all approach rather than letting states set conditions appropriate for local situations.

During a debate between Greg Golembe, senior advisor for banking relations at the OCC, and Neil Milner, director of the Conference of State Bank Supervisors, Golembe said that the OCC believes it has authority from Congress to adopt the preemption measure. Milner said that attorneys for his organization disagree with that claim. He also expressed his concern that the expansion of the OCC's authority to affiliates of federal banks--such as consumer finance companies--is part of what he typified as the OCC's historical tendency to gradually expand its authority by carving out authority in different areas. Milner suggested that this authority may someday be extended to insurance and securities affiliates of national banks, although these areas are not now considered to be under the new regulatory authority.

Congress has set hearings on the OCC rule for late January and early February. The committees suggested that the letter to Montana's congressional delegation support the role of the states in banking issues.

Committee Reviews Workers' Comp Exclusion...The Economic Affairs Committee reconvened in the afternoon to conduct committee business. The committee heard testimony on how various exclusions have been made to the general requirement under 39-71-401, MCA, that all employers in the state carry workers' compensation insurance. Bob Biskupiak, president-elect of the Independent Insurance Agents of Montana, suggested that employers who are exempt from workers' comp coverage may also not have liability insurance under their general liability policy to address workers' compensation litigation. Biskupiak said that the general liability policy usually expects workers' compensation insurance to be in place; if it is not, the coverage is unlikely to be available. A letter from the Independent Insurance Agents asked: "If some employees are exempt from the Workers' Compensation Act, how do we advise our client employers regarding how they cover their exposures for these employees?"

Jerry Keck, administrator of the Employers' Relations Bureau, Department of Labor and Industry, said that decisions to allow exemptions raise questions about cost-shifting and who pays for hospital costs and lost wages of injured employees who lack coverage. Dick Martin, an attorney for a workers' comp claimant, reminded the committee that an exempt employer is subject to litigation. A claimant testified that even when workers' compensation coverage is in place, an injured claimant who is unable to work may end up on welfare because of the lag time between a claim being filed and a benefit check being written.

Agency Monitoring...State Auditor John Morrison provided data on revenue collected from insurance premiums taxes, securities investigations, and various other sources. The state auditor is responsible for overseeing both the insurance and the securities industries in Montana.

A representative of the Board of Medical Examiners reported that the board had decided to revisit proposed rules to implement HB 321, regarding the licensing of medical assistants.

Venture Capital...The committee also discussed how the state can best address companies' needs for capital, including venture capital options. After a review of various aspects of venture capital, the committee discussed the role of the state in helping businesses to access capital. The issue will be explored in more detail at the Economic Affairs Committee's March 11 meeting, in Room 137 of the state Capitol. Those who are interested in providing information for the committee's review of venture capital are invited to a Feb. 6 meeting in Room 137 of the Capitol at 11 a.m. Please call Pat Murdo, committee staff, for more information, (406) 444-3594, or e-mail her at: pmurdo@mt.gov.

## STATE ADMINISTRATION AND VETERANS' AFFAIRS COMMITTEE

Committee Disputes New Federal Banking Rules...The State Administration and Veterans' Affairs Interim Committee met on Jan. 23. During the morning session, the committee met jointly with the Economic Affairs Interim Committee to hear from various state and national stakeholders in the banking industry and in bank licensing and regulation on the effects and implications of recently adopted federal rules that preempt the historical role of states in regulating nationally chartered banks or their subsidiaries and in prosecuting legal infractions committed by nationally chartered banks or their subsidiaries. (See the article for the Economic Affairs Interim Committee above for details of the morning session.) One result of the session was a unanimous vote by this committee to send a letter to Montana's congressional delegation to: (1) hold congressional hearings on the preemption rules; and (2) consider congressional action to mitigate or eliminate the provisions of the federal rules that preempt what has

historically been state prerogatives regarding licensing, regulation, and prosecution under the dual (national/state) banking system.

Subcommittee to Look at Highway Patrol Recruitment Problems...The remainder of the committee meeting was devoted to issues identified by or associated with veterans' groups or the Montana Department of Military Affairs, updates on administrative issues emerging within the purview of, respectively, the Board of Veterans' Affairs, the Department of Administration, the Public Employees' Retirement Board, and the Montana Highway Patrol.

The Montana Highway Patrol again reported on the continuing, significant challenges in recruiting and retaining qualified candidates for MHP officer positions. Col. Shawn Driscoll, chief of the MHP, briefed the committee on pay differentials among MHP officers and local law enforcement officers--police and sheriff's offices--in various counties in Montana. Following Col. Driscoll's presentation, the committee formed a subcommittee to study the reasons for ongoing challenges in recruiting and retaining qualified MHP officers. The members of the subcommittee are: Rep. Stan Fisher, chair; (R-Bigfork); Sen. Kelly Gebhardt (R-Roundup); Rep. Larry Jent (D-Bozeman); and Rep. Ralph Lenhart (D-Glendive). The subcommittee will likely meet before the next scheduled meeting of the full committee on June 10-11. Updates will be posted periodically to the subcommittee's portion of the committee's website.

For additional information about the committee or the subcommittee, contact Dave Bohyer by phone at (406) 444-3064 or by e-mail at dbohyer@mt.gov.

## CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

The Children, Families, Health, and Human Services Committee met Jan. 22 and 23 in Helena to continue its studies on the SJR 11 study of alcohol and drug policy and coordinated statewide leadership and on the HJR 3 study of public defense for indigent parents in child abuse and neglect proceedings. Coverage of the meeting will appear in the March issue of **THE INTERIM**.

The committee will meet again on March 25 and 26 in Helena. If you need more information or wish to be placed on the interested persons list, contact Susan Byorth Fox at (406) 444-3597 or sfox@mt.gov.



## LEGISLATIVE AUDIT COMMITTEE

The Legislative Audit Committee met Dec. 17 and 18, 2003. The following audit reports were presented:

### Financial Audits

#### State of Montana, Basic Financial Statements (Statewide Audit) (03-01)

We performed a financial audit of the Basic Financial Statements of the state of Montana for the fiscal year ended June 30, 2003. The report contains the Basic Financial Statements of the state of Montana for fiscal year 2002-03, which were prepared by the Department of Administration's Administrative Financial Services Division. We issued an unqualified opinion on these financial statements. The opinion means the reader can rely on the financial statement information presented. This report also contains our report on compliance and internal control over financial reporting. This report contains no recommendations to the Department of Administration

#### Board of Investments (03-03)

This is the report on our annual financial audit report of the Board of Investments (board) for the fiscal year ending June 30, 2003. The objectives of our audit included determining if the board's financial statements presented fairly its financial position and results of operations at and for the period ending June 30, 2003, with comparative totals at and for the period ending June 30, 2002. We issued unqualified opinions on the financial statements of the Board of Investments' Retirement Funds Bond Pool, Trust Funds Bond Pool, Short Term Investment Pool, Montana Domestic Equity Pool, Montana International Equity Pool, Montana Private Equity Pool, All Other Funds, and Enterprise Fund. This report contains no recommendations.

#### Montana State Fund (03-05)

This is the report on our annual financial audit of the Montana State Fund for the fiscal year ending June 30, 2003. The objectives of our financial audit included determining if the Montana State Fund's financial statements presented fairly its financial position and results of operations at and for the period ending June 30, 2003, with comparative totals at and for the period ending June 30, 2002. This report contains no recommendations.

#### Guaranteed Student Loan Program (03-06)

We performed a financial audit of the Montana Guaranteed Student Loan Program for the fiscal year ended June 30, 2003. This report contains the audited financial statements and accompanying notes for fiscal year 2002-03. We issued an unqualified opinion on the financial statements. The opinion means the reader may rely on the financial statement information presented. This is an annual financial audit performed to attest to the fairness of the financial statements of the Montana Guaranteed Student Loan Program.

Audit recommendations, if any, identified during this financial audit will be included in the biennial financial-compliance audit of the Office of the Commissioner of Higher Education.

#### Montana Board of Housing (03-07)

This is the report on our annual financial audit of the Board of Housing (board) for the fiscal year ending June 30, 2003. The objectives of our financial audit included determining if the board's financial statements presented fairly its financial position and results of operations at and for the period ending June 30, 2003, with comparative combined totals at and for the period ending June 30, 2002. The audit report contains no recommendations.

#### Public Employees' Retirement Board (03-08)

This is the report on our annual financial audit of the Public Employees' Retirement Board (board) for the fiscal year ended June 30, 2003. The objectives of our financial audit included determining if the board's financial statements presented fairly its financial position and results of operations at and for the period ending June 30, 2003, with comparative combined totals at and for the period ending June 30, 2002. These statements demonstrate the financial position and results of operations for the following Pension Trust Funds:

- Public Employees' Retirement System Defined Benefit Retirement Plan
- Municipal Police Officers' Retirement System
- Game Wardens' and Peace Officers' Retirement System
- Sheriffs' Retirement System
- Judges' Retirement System
- Highway Patrol Officers' Retirement System
- Firefighters' Unified Retirement System
- Volunteer Firefighters' Compensation Act
- Public Employees' Retirement System Defined Contribution Retirement Plan
- Section 457 Deferred Compensation Plan

This report contains no recommendations.

#### Teachers' Retirement System (03-09)

This is the report on our annual financial audit of the Teachers' Retirement System (system) for the fiscal year ending June 30, 2003. The objectives of our financial audit included determining if the system's financial statements presented fairly its financial position and results of operations at and for the period ending June 30, 2003, with comparative totals at and for the period ending June 30, 2002. This report contains no recommendations.

#### The University of Montana (03-10)

We performed a financial audit of The University of Montana's consolidated financial statements for the fiscal year ended June 30, 2003. These financial statements present the financial position, the results of operations, and cash flows, on a consolidated basis,

of all four campuses affiliated with The University of Montana: The University of Montana-Missoula; Montana Tech of The University of Montana; The University of Montana-Western; and The University of Montana-Helena College of Technology. The statements include comparative information for the fiscal year ended June 30, 2002. This report contains an unqualified opinion on those financial statements and accompanying notes for the fiscal year ended June 30, 2003, and the comparative information for the fiscal year ended June 30, 2002. This opinion means the reader may rely on the financial statement information presented. This audit is performed to attest to the fairness of the consolidated financial statements of The University of Montana. Audit issues, if any, identified during this audit have been discussed with university management and, if appropriate, will be included in our biennial financial-related audit of the university.

#### Montana State University (03-11)

We performed a financial audit of Montana State University's consolidated financial statements for the fiscal year ended June 30, 2003. The financial statements present the financial position, the results of operations, and the cash flows, on a consolidated basis, of all four campuses affiliated with Montana State University: Montana State University-Bozeman; Montana State University-Billings; Montana State University-Northern (located in Havre); and Montana State University College of Technology-Great Falls. The statements include comparative information for the fiscal year ended June 30, 2002. This report contains an unqualified opinion on the financial statements and accompanying notes for the fiscal year ended June 30, 2003, and the comparative information for the fiscal year ended June 30, 2002. The opinion means the reader may rely on the financial statement information presented. This audit is performed to attest to the fairness of the consolidated financial statements of Montana State University. Audit issues, if any, identified during this audit have been discussed with university management and, if appropriate, will be included in our biennial financial-related audit of the university.

### **Financial-Compliance Audits**

#### Department of Public Health and Human Services (03-14)

We performed a financial-compliance audit of the Department of Public Health and Human Services (PHHS) for the two fiscal years ended June 30, 2003. We determined the status of audit recommendations made to PHHS in the previous audit. Of the 24 recommendations still applicable to the agency, PHHS implemented 20, partially implemented two and did not implement one. One recommendation is no longer applicable to the department. We issued an unqualified opinion on the financial schedules for each of the two years under audit. The opinion is located on page A-3. The reader may rely on the presented financial information and the supporting data on the Statewide Accounting, Budgeting and Human Resources System. This audit report contains 16 recommendations to PHHS. The issues discussed in this report include noncompliance with federal regulations concerning cash management, earmarking, and reporting.

PHHS management's response to our recommendations is included in the report document.

#### Montana Department of Transportation (03-17)

This report documents the results of our financial-compliance audit of the Montana Department of Transportation (department) for the two fiscal years ended June 30, 2003. We issued a qualified opinion on the financial schedules presented in this report. This means the reader should use caution when relying on the presented financial information and the supporting information on the state's accounting system.

This report contains nine recommendations directed to the department. The first six recommendations are control issues related to federal Davis-Bacon Act requirements, Highway Traffic Safety Program, Audit Assessments, Recording of Highway Assets, Cash Change funds, and Travel Advances. Also included are two recommendations concerning subrecipient monitoring and accounting misclassifications of federal indirect cost recovery revenue and capital assets. Of the seven recommendations from the prior audit, we found the department fully implemented four recommendations, partially implemented two, and one recommendation was not applicable during the current audit period.

#### Department of Labor & Industry (03-24)

This report documents the issues noted during our financial-compliance audit of the Department of Labor and Industry (department) for the fiscal year ended June 30, 2003. This report contains five recommendations directed to the department. Our previous audit report contained ten recommendations. The department implemented eight, partially implemented one, and did not implement one recommendation. We issued an unqualified opinion on the financial schedules presented in this report. This means the reader can rely on the presented financial information and the supporting detailed information on the primary accounting records.

#### Department of Fish, Wildlife and Parks (03-25)

This audit report is the result of our financial-compliance audit of the Department of Fish, Wildlife and Parks for the fiscal year ending June 30, 2003. The four recommendations in this report relate to cash deposit issues, indirect cost recoveries, compliance with department purchasing regulations, and reporting actual or suspected theft. We issued an unqualified opinion on the financial schedules contained in this report. The reader may rely on the financial information presented in the financial schedules and the supporting data on the state's accounting system.

### **Financial-Related Audits**

#### The University of Montana (All Campuses) (03-12)

We performed a financial-related audit, as defined in generally accepted government auditing standards, of The University of Montana, (all campuses), for the two fiscal years ended June 30, 2003. Our audit, in compliance with these standards, included determining whether (1) financial information is presented in accordance with

established or stated criteria, (2) the entity has adhered to specific financial-compliance requirements, and (3) the entity's internal control structure over financial reporting and/or safeguarding assets is suitably designed and implemented to achieve the control objectives. Our report contains two recommendations related to improving compliance with the Montana work-study law and recording financial activity in accordance with state law.

#### Montana State University (All Campuses) (03-13)

We performed a financial-related audit, as defined in generally accepted government auditing standards, of Montana State University, all campuses, for the two fiscal years ended June 30, 2003. Our audit, in compliance with these standards, included determining whether (1) financial information is presented in accordance with established or stated criteria, (2) the entity has adhered to specific financial compliance requirements, and (3) the entity's internal control structure over financial reporting and/or safeguarding assets is suitably designed and implemented to achieve the control objectives. This report contains nine recommendations addressing areas where Montana State University can improve its financial accountability and internal controls, including issues relating to monitoring of grants and contracts and its compliance with state and federal laws and regulations relating to financial aid, payroll, and inventory.

#### **Performance Audits**

##### Examination of Coordination and Potential Consolidation of WIA and TANF (03P-06)

This audit addresses coordination of Workforce Investment Act (WIA) and Temporary Assistance for Needy Families (TANF) employment and training programs. Employment and training services are provided to TANF recipients through the Work Readiness Component (WoRC) program. State-level administration of WIA's employment and training services are the responsibility of the Department of Labor and Industry (DLI). The Department of Public Health and Human Services (DPHHS) is responsible for administering WoRC program employment and training activities. Our first audit objective was to determine how effectively WIA and WoRC employment and training services are coordinated in the state. Audit testing shows the employment and training system provides a mechanism to ensure WIA and WoRC programs are coordinated. Additionally, we noted state and local officials have taken measures to ensure the WoRC program is included within WIA's employment and training system. Our second audit objective evaluated the need and feasibility for WIA and WoRC employment and training programs to be integrated within a single agency. Since no problems were noted with coordination between WIA and WoRC programs, we recommended administration of the WoRC program remains within DPHHS.

##### The Petroleum Tank Release Compensation Fund (02P-09)

This report provides findings and recommendations relating to a performance audit of the Petroleum Tank Release Compensation Fund (Petrofund). Recommendations include:

- Redefining the Board's role to reflect a more proactive management approach.
- Revising the Board's membership, staff resources and appeals procedures.

- Improving the compliance, cleanup and compensation functions performed by the department and the Board.
- Transitioning coverage of petroleum release liability from Petrofund to private sector insurers.

##### Management of State Government Airfare Purchases (03P-07)

The General Services Division within the Department of Administration is statutorily responsible for purchasing and procurement of supplies and services for state government, including the university system. The General Services Division within the Department of Administration is statutorily responsible for purchasing and procurement of supplies and services for state government, including the university system. This performance audit report provides information about state government airfare purchases and presents recommendations for improving purchasing practices and procedures. Recommendations include:

- Developing and implementing resources to assist state agencies in purchasing lower cost airfares.
- Increasing state agency use of the state purchasing card to increase agency purchasing options and reduce administrative airfare purchasing costs.
- Using the state purchasing card to obtain and analyze management information related to commercial airfare purchases.

#### **Limited Scope Performance Audits**

##### Telework in Montana State Government (03P-01)

This report examines how telework is currently being used in Montana state government and addresses the question of whether the use of telework could be expanded in state government.

- We found approximately 3.8 percent of the workforce for agencies responding to our survey are currently teleworking.
- Agencies are reporting increased productivity from their teleworkers and are saving money with reduced office space needs and reduced employee turnover
- Because telework offers significant benefits to state government, we recommend the Governor encourage expansion of a state agency-wide telework program.

##### Tax Dispute Resolution Process (03P-04)

We conducted a limited scope performance audit of the process used for resolving taxpayer disputes related to corporate license and natural resource taxes. The Department of Revenue administers the majority of this process. Assessments from compliance audits of businesses liable for corporate license or natural resource taxes are typically the "trigger point" for taxpayer disputes. Taxpayers can appeal department tax assessment decisions. The appeal process starts as an appeal directly to audit staff and management. If the dispute cannot be resolved, the dispute can be referred to the department's Office of Dispute Resolution, which offers mediation of tax issues. If the tax dispute cannot be resolved via administrative remedies, disputes progress to a more

formal course of appeal. Appeals can be brought before the State Tax Appeal Board and finally the judicial system. Resolution may occur at any level of the process.

Our review and testing shows the dispute resolution process related to corporate license and natural resource tax assessments ensures uniform and fair treatment of taxpayers. Other principal findings and conclusions are: tax assessments are generally not reduced during the protest and appeal process; the majority of tax disputes are resolved during administrative review and rarely progress on to appeals before the State Tax Appeal Board or the court system; and, the department established an effective system of controls over the administrative remedy portion of the tax dispute resolution process.

### **Performance Audit Surveys**

#### Low Income Energy Assistance Program (LIEAP) (03P-03)

The Legislative Audit Committee requested a performance audit of LIEAP. LIEAP provides heating assistance to eligible households through a benefit payment. All eligible LIEAP applicants receive a benefit payment. All LIEAP clients are automatically eligible for the Weatherization Program. Eligible households are prioritized based on home energy burden, with priority given to elderly and handicapped individuals. While there are over 16,000 eligible households, on average, only about 2,500 households receive weatherization services each year due to program funding limits.

To effectively utilize audit resources, we conducted a survey to determine the scope and amount of audit work to be performed. Based on our evaluation of certain audit risk factors and monitoring by the federal government, we determined the possibilities of recommendations to significantly increase efficiency and effectiveness appeared to be limited. Thus, an audit did not appear cost effective. As a result, we did not recommend a performance audit at this time.

#### Refugee Assistance Program (03P-10)

We conducted a performance audit survey of the Refugee Assistance Program administered by the Department of Public Health and Human Services (DPHHS). The department contracts with a nonprofit group to provide services to Montana's refugee population. The program is funded entirely with federal funds and is designed to help refugees settle into communities and become self-sufficient. Services provided include: securing shelter and food, language translation, medical attention, language lessons, skill building, and job placement. Annual program expenditures are approximately \$177,000.

Our audit work was initiated due to earlier concerns identified during DPHHS's fiscal review of the department's contractor. The review identified poor management and fiscal controls. We performed an operational risk assessment of the Refugee Assistance Program and examined current operations and controls. We found the contract provider had greatly improved management and fiscal controls. We identified one control weakness and recommended the department conduct follow-up contract monitoring. The department concurred and implemented our recommendation. Our audit survey shows

further performance audit of the department's Refugee Assistance Program is not warranted.

### **Information System Audits**

#### Lottery Security (03DP-03)

As required by state law, the Legislative Audit Division conducted a comprehensive information systems audit of the Montana Lottery. Overall, we concluded that controls are in place to ensure security of Montana Lottery operations. However, we determined controls could be improved. The current report identifies four areas for improvement: network security, computer security; incomplete security investigations; warehouse physical security, and existence of documentation. Accordingly, we recommend Lottery staff: restrict network access and evaluate network services; evaluate computer administrator accounts and passwords; comply with internal policies and ensure criminal and credit inquiries are performed on vendors/contractors; secure physical access to the warehouse facility to deter unauthorized access; and develop and maintain written internal policies and procedures to ensure security of data and information technology resources. Overall, except as discussed in the recommendations identified, Lottery operates in compliance with state law and internal procedures and security controls are in place to ensure security of Lottery operations.

#### Statewide Accounting, Budgeting and Human Resource System (SABHRS) (04DP-02)

SABHRS is the state of Montana's enterprise system used by all state agencies to account for and report the use and disposition of all public money and property in accordance with state law. SABHRS supports the core administrative processes used by all state agencies to account for and record financial and human resource data. The Legislative Audit Division, Information Systems audit team, annually evaluates selected SABHRS general and application controls. Based on our work, we conclude that controls we tested exist to ensure data acquired from state agencies is properly processed and recorded. The report contains one recommendation for the department to update the SABHRS security plan through a structured security planning process.

#### IS Support Work on MSU and the UM Banner Systems ((03DP-06) (Memo)

In support of the financial and financial-related audits of Montana State University and The University of Montana, we conducted a limited scope information systems review focusing on selected Banner processing within the SCT Banner control environments. Although the SCT Banner software implemented by the universities is similar in baseline functionality, there is an important distinction between the controls that are delivered with the software and how the MSU and UM university staffs chose to implement or activate the controls.

We conducted the audit work according to generally accepted government auditing standards. We will not formally report the internal control weaknesses we identified; however, these details have been communicated to agency management. A restricted distribution of an internal memorandum has been provided to LAD staff communicating existence and operation of controls.

IS Support Work on Systems administered by DPHHS (03DP-05)

In support of the financial-compliance audit of the Department of Health and Human Services, we conducted a limited scope information systems audit focusing on select system processes in the following information systems administered by the department:

- EBT--Electronic Benefit Transfer System
- TEAMS--The Economic Assistance Management System
- CAS--Cost Allocation System
- SEARCHS--The System for Enforcement and Recovery of Child Support
- CAPS--Child and Adult Protective Services System
- AWACS--Agency-Wide Accounting and Client System--Contract Sub-System

**Contracted Audits**Montana State Lottery Financial Statements and Independent Auditor's Report (03C-02)

This financial-compliance audit report contains the results of the audit of the Montana State Lottery, Department of Administration, for the fiscal year ended June 30, 2003. The audit was conducted by Galusha, Higgins, and Galusha, PC, under contract between the firm and our office. The report contains an unqualified opinion on the financial statements contained in the report.

Montana State Lottery, Cash Drawings (Observation) (03C-03)

This report contains the results of the observation of the Montana State Lottery, Department of Administration Drawings for the year ended June 30, 2003. The observations were conducted by Galusha, Higgins & Galusha, PC, under a contract with our office. There are no recommendations directed to the Lottery as a result of this contract report.

Legislative Branch (03C-04)

Under contract with the Legislative Auditor's Office, Junkermier, Clark, Campanella, Stevens, P.C., Certified Public Accountants, conducted the financial-compliance audit of the Legislative Branch Excluding Consumer Counsel for the Two Fiscal Years Ended June 30, 2003. The auditor made no recommendations and gave an unqualified opinion on the financial schedules presented.

Montana Consumer Counsel Legislative Branch (03C-04)

Under contract with the Legislative Auditor's Office, Junkermier, Clark, Campanella, Stevens, P.C., Certified Public Accountants, conducted the financial-compliance audit of the Legislative Branch, Montana Consumer Counsel for the Two Fiscal Years Ended June 30, 2003. The auditor made no recommendations and gave an unqualified opinion on the financial schedules presented.

**Next Meeting in March...**The next Legislative Audit Committee meeting is tentatively scheduled for March 23, in Room 102 of the state Capitol.

**THE BACK PAGE****EXAMINING ECONOMIC DEVELOPMENT GOALS IN MONTANA**

By Pat Murdo, Legislative Research Analyst

**HOW CAN YOU DO "IT" IF YOU DON'T KNOW WHAT "IT" IS?**

What is economic development? Jobs? Business startups? Improved opportunities for some or in some parts of the state, if that boosts the state's overall economic statistics? Separate polls in late 2003 in Montana by Lee Newspapers and the Montana Chamber of Commerce show that "economic development" or "jobs and wages" topped the list of Montanans' concerns.

Figuring out the state's role in economic development, and in particular the role of education, is one of the projects that the Board of Regents is pursuing. Over the coming months, the Regents will be working with the legislative and executive branches to address details and to design a plan for developing Montana's economy. At the same time, the Economic Affairs Interim Committee is looking at various aspects of economic development. Governor Judy Martz is also pursuing various approaches through her Office of Economic Opportunity. Last, but not least, most candidates running for public office talk about economic development in some form or another. What is this thing called economic development and what are Montana's expectations?

A critical starting point for determining what economic development means in Montana requires dealing with a very basic question: What is the role of government itself? For example:

- Should the government take a laissez faire or hands-off approach with no real involvement and minimal interference?
- Should government exercise an invisible hand? This might include making grants and loans available to local economic development offices, much as the state does now.
- Should government provide a more obvious helping hand? And if so, to whom? What kinds of tools are appropriate for government to use?

**THE CHICKEN OR THE EGG?**

Legislators are accustomed to hearing the "chicken and egg" theory of economic development. They can put resources toward the "eggs" of education, improved workforce skills, and similar investments, or they can encourage growth of the already existing producers, the "chickens" (no offense to business for the metaphor), by lowering business taxes, providing tax credits, or streamlining or decreasing certain types of regulation. Lowering revenue streams may limit the resources available for the egg, but raising taxes may starve the chicken.

Deciding among economic development choices depends in part on philosophical views about the fundamental role of government. Sufficient public resources may not be available to invest in both the chicken and the egg. That's why decisions on the role of government become important.

### GOOD-PAYING JOBS?

The need for economic development is far more obvious than the path. To illustrate, according to the 2000 U.S. Census, 13.4 percent of Montana's residents live in poverty—a significantly higher percentage than the national average of 11.9 percent. Average household income here ranks among the lowest in the nation. Montana has a high percentage of residents who make ends meet by working more than one job. The economic development goal in the public's eyes, according to polls, is not just a larger supply of jobs but a larger supply of good-paying jobs. What then counts as a good-paying job, and where in Montana can one be found or created?

A good-paying job might mean one that pays "more than I make now." But for discussion purposes, a good-paying job might yield a salary equivalent to the national median household income of \$41,486. In Montana, the median household income in the 2000 Census was \$33,103. Some workers might be willing to accept the median earnings, recorded in the 2000 Census, of \$30,295 for men working in Montana full-time, year-around. (The average for women working full-time, year-around was \$22,214).<sup>1</sup>

### WHERE ARE GOOD-PAYING JOBS FOUND?

Many of the "high-paying" jobs are found in the medical and legal professions and other professions that often require more than a bachelor's degree. Then there are the good-paying jobs associated with resource development or extraction that typically don't require a college degree but include elements of personal risk or risk linked to unpredictable world commodity markets. When economic developers look at good-paying jobs, they typically think of manufacturing jobs, in part because manufacturing is usually associated with large businesses that provide fringe benefits as well as higher wages. Table 1 shows that roughly one of three jobs in Montana is in management, professional, or related occupations. An even larger percentage—nearly 43 percent—reflects the combined grouping of service, sales, and office occupations. Manufacturing and natural resource extraction jobs, along with transportation jobs, comprise slightly more than one-fifth of Montana's work force.

<sup>1</sup>U.S. Census 2000 statistics. For Montana data, which are in 2000 inflation-adjusted dollars, see: <http://www.census.gov/acs/www/Products/Profiles/Single/2000/C2SS/Tabular/040/04000US303.htm>. For U.S. data: <http://www.census.gov/acs/www/Products/Profiles/Single/2000/C2SS/Tabular/010/01000US3.htm>

**Table 1: Occupations of Montana's Civilian Population, 16 Years or Older, in 2000**

Occupation	Number	Percent
Management, professional, and related occupations	140,956	33.1
Service occupations	73,316	17.2
Sales and office occupations	108,792	25.5
Farming, fishing, and forestry occupations	9,246	2.2
Construction, extraction, and maintenance occupations	45,770	10.8
Production, transportation, and material moving occupations	47,897	11.2
<b>Total</b>	<b>425,977</b>	<b>100.0</b>

Source: U.S. 2000 Census. This table reflects a rounding up (to 10.8 percent) for construction jobs to achieve 100 percent. See: [http://factfinder.census.gov/servlet/QTTable?ds\\_name=DEC\\_2000\\_SF3\\_U&geo\\_id=04000US30&q...](http://factfinder.census.gov/servlet/QTTable?ds_name=DEC_2000_SF3_U&geo_id=04000US30&q...)

Those who see a need for a helping hand from government often push an "industrial policy" in which government focuses on benefits for one target group in the hope that other spinoff businesses will follow. With industrial policysetting, a government decides, in essence, who will be winners of government help. If the government guesses right, then all may benefit. If the government guesses wrong, all pay.

### JOBS CLUSTER IN CERTAIN GEOGRAPHIC AREAS

Another element of *where* these good-paying jobs are found is geographic. Whenever economic development officers look at providing either targeted or broad-based incentives, they often focus on less economically vibrant areas. For example, in states with major metropolitan areas, the inner city is often a focus of economic development. In Montana the more prevalent question is whether economic development efforts should be targeted to slow-growth areas of the state, to fast-growing areas, or to a combination of these.

Table 2 shows major employers by type in a range of Montana counties. Counties with per capita income above the Montana average generally also have the highest percentage of private employers. A push for more government-supported economic development in areas with a relatively high percentage of private employment may yield the highest likelihood of success, but this approach also may result in at least a temporarily greater imbalance in per capita income between the have and the have-not areas. Also among the policy decisions to be made is whether economic development should be targeted to a specific area.

**Table 2: Class of Worker in Montana, Selected Counties by Percent**

	Per Capita Income	Private Employer	Government (All Levels)	Self-Employed, Not Incorporated	Family--Employee Unpaid
Montana	\$17,151	69.2	18.3	11.8	0.7
Cascade	\$17,566	73.0	17.1	9.4	0.5
Custer	\$15,876	63.6	23.5	12.3	0.5
Dawson	\$15,368	67.4	20.1	11.8	0.7
Fergus	\$15,808	58.1	19.0	20.5	2.4
Flathead	\$18,112	75.4	11.5	12.7	0.4
Gallatin	\$19,074	70.3	17.9	11.2	0.5
Glacier	\$11,597	45.4	44.6	8.1	2.0
Lewis & Clark	\$18,763	62.5	28.2	9.1	0.3
Madison	\$16,944	60.1	18.1	20.4	1.3
Missoula	\$17,808	73.5	17.1	9.1	0.3
Musselshell	\$15,389	59.5	16.9	21.7	1.9
Powell	\$13,816	54.8	29.7	14.5	0.9
Rosebud	\$15,032	64.4	25.1	9.8	0.7
Yellowstone	\$19,303	79.4	11.9	8.5	0.3

Source: U.S. 2000 Census

**“EGG” OPTIONS**

In deciding what types of government-supported economic development initiatives make better sense for Montana, decisionmakers face the tension between rural and urban Montana and the complexity or difficulty of identifying the most appropriate approaches.

The “egg” decisions typically involve infrastructure that benefits all residents, directly or indirectly. Education is one example. Better roads and transportation or communications systems that bring tourists or customers in or send products out are other examples. Reasonable housing costs, family-supportive communities, good air and water quality, soul-satisfying vistas, and relatively easy access to recreational opportunities are among other quality-of-life factors that fall into the infrastructure category. Government

involvement in ensuring these types of quality-of-life factors may mean expending public resources, such as on child care for workers seeking to get back into the work force. Enacting or repealing regulations that impact some businesses in favor of others is another option. Doing nothing also is a choice, since the status quo may attract certain types of people and business.

**COMPETITION FOR THE “CHICKENS”**

On the producer or “chicken” side of the equation, Montana competes with other states that use similar bags of incentives. Nearly all states have forms of tax incentives enacted to encourage new business, expand existing business, or improve wages. Enterprise zones, enacted in more than half of the states, including Montana, often offer a combination of tax credits with local property tax waivers and infrastructure support in the form of good transportation hubs. However, recent studies of enterprise zones have found that they do not necessarily return value to those states whose primary goal is job creation. *In State Enterprise Zone Programs: Have They Worked*, Alan Peters and Peter Fisher wrote:

*We find no evidence of a strong positive impact of enterprise zone incentives on growth: zones offering larger incentives (or a lower net tax rate) for firms in a given sector did not attract significantly more [company] births and in-migrations of establishments in that sector than zones with a less attractive tax and incentive regime. While we do not claim that our research settles this matter, we do believe our results cast considerable doubt on the belief, widespread in economic-development policy circles, that incentives are crucial for growth in targeted areas.<sup>2</sup>*

Further, incentives such as tax credits may not ultimately balance out against projected revenues deriving from the incentives. Peters and Fisher suggest that the efforts of states to entice new businesses often result in one-upmanship, with the potential for a negative net revenue impact because the startup industry's tax credits sometimes “exceed the entire new-plant tax.”<sup>3</sup> The competition for business also pits jurisdictions within a state, further complicating the role of the state.

States also compete by way of varying levels of taxes on business. The fairly recent lowering of Montana's business equipment tax<sup>4</sup> to 3 percent was, in part, an effort to compete with nearby states. One stated intention in cutting the business equipment tax

<sup>2</sup> Alan Peters and Peter Fisher, *State Enterprise Zone Programs: Have They Worked?*, W.E. Upjohn Institute for Employment Research (Kalamazoo, MI: 2002), p. 13.

<sup>3</sup> *Ibid.*, p. 8.

<sup>4</sup>“Business equipment” is used here for those types of business and personal property included in Class 8, pursuant to section 15-6-138, MCA.

was that the ripple effect would result in businesses using money formerly paid in taxes to instead increase production, employment, or wages, with a resulting boost to the general economy. Whether this scenario actually happens depends on a number of factors, including time for the business cycles to mature.

In economic development terms, several questions may help in considering whether the recent and potential reductions in the business equipment tax rate is more or less useful than other incentives. For example: Who pays the most in business equipment taxes? Would these companies be in Montana absent the business equipment tax reductions? Is the tax rate on business equipment fair in relation to tax rates applicable to other types of property?

Many of the businesses that pay the most in Montana's business equipment taxes also have the greatest need for equipment. For these businesses, a cut in the business equipment tax may lead to the purchase of more equipment but not necessarily to the creation of more jobs or better-paying jobs. As indicated in Table 3 (on the next page), the companies paying among the highest amounts of the business equipment taxes also rank among the 4.1 percent of Montana employers that employ 50 or more employees—often in "good-paying" jobs.<sup>5</sup> But these companies do not necessarily base their decisions of expansion or hiring strictly on the business equipment tax rate.<sup>6</sup> Nor are they the largest employers in Montana, a title that goes to government and nonprofit organizations, such as hospitals. The debate over whether the business equipment tax rate is fair or whether its recent and potential reduction provides a boost to the state's economic development is likely to continue to wage on several levels.

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<sup>5</sup>The 4.1 percent of Montana worksites with 50 or more employees have almost half of the state's overall workforce. But the majority of worksites in Montana—88 percent—have fewer than 20 employees, according to March 2002 employment data from the Montana Department of Labor and Industry, Research & Analysis Bureau.

<sup>6</sup> See, for example, a quote from the controller at Pyramid Mountain Lumber who told the *Great Falls Tribune* that "other" reasons enter into a decision to purchase equipment. Mike Dennison, "Businesses praise equipment tax break, but say it's not key in creating new jobs," *Great Falls Tribune*, December 29, 2003, p. 1.

**Table 3: Selected Montana Businesses by Class 8 Taxable Valuation and Employment**

	<b>Class 8 Property Taxable Valuation, 2003</b>	<b>Employment in 2003</b>
Advanced Silicon Materials LLC	\$10,276,772	~260
Stillwater Mining	\$6,397,043	~1,600
ConocoPhillips (Billings)	\$3,957,488	232
ExxonMobil Corp. (Billings)	\$2,838,061	250
Smurfit-Stone Container Corp.	\$2,735,855	~500
CHS (Cenex) (Billings/Laurel)	\$2,436,558	250
Western Wireless (various locations)	\$1,695,257	95
Plum Creek MDF	\$1,156,516	~1,000

Source: Taxable valuation from MT Department of Revenue. Employment figures from phone calls to companies and from the MT Department of Commerce, using 2003 *Harris Directory of Montana Businesses*

#### WHAT OTHER TYPES OF INCENTIVES ARE AVAILABLE?

Beyond tax incentives and quality-of-life or infrastructure incentives, a state may actively promote economic development through various capital formation programs or by creating public-private partnerships. A less active approach is to encourage communication between existing government commerce/economic development staff and regional or location-specific economic and community development organizations. Through contacts and assistance, the state can channel those seeking help to appropriate federal or state programs. This approach reflects what Montana and other states do, although some states (Wyoming is one) have arranged a public-private structure to handle economic development.

Among the incentives that rely on state participation, each type of incentive raises questions about the appropriate level of involvement. For example, those who question enterprise-zone types of tax incentives say that access to capital is a larger issue for companies deciding whether to set up shop than are considerations such as taxes or regulation.<sup>7</sup>

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<sup>7</sup>Peters and Fisher, *op. cit.*, p. 26.



More states are becoming involved in helping startup businesses gain access to capital. Some of the programs guarantee tax credits to investors who pool their money in venture funds. Montana had such a program in the late 1980s and 1990s, which resulted in nearly \$7 million in tax credits going to a variety of venture capital funds. Some of these funds invested initially (before a conflict of interest statute was passed) in the investors' own businesses, meaning that the investor essentially paid only half the cost of the investment since the other half came back in the form of tax credits. The Montana Capital Company Act included no requirement for job creation but required the investments either to be in Montana or in limited amounts outside Montana "if there is a substantial likelihood that the investment will produce a qualified investment in Montana." See section 90-8-201(2)(b), MCA.

Capital assistance programs among various states range from those with specific directives for investments to be made within the state in exchange for tax credits to those in which a state serves only as a backstop guarantor to investors in venture funds, who would receive tax credits only if a venture fund fails to achieve agreed-on returns. Often these funds do not limit investment to startups within the same state, because the goal of the investments is to achieve an adequate internal rate of return as much as it is to provide some sort of venture capital.

Venture capital programs also may be structured to funnel back to a state special revenue account any excess returns on investment by the private venture capital fund. In turn, funds in the special revenue account can be used to target economic development options in line with the state's own priorities. Still other venture capital programs promise tax waivers to certain industries if they invest in a venture capital fund.

### **BALANCING ACT**

The possibility for pitfalls is ever-present whenever a state sets about determining its level of involvement in economic development. There is a tendency to want to "do something" to help business or to create jobs. But action in one direction may cause a backlash in another, especially if no clear goal is articulated. Some state-sponsored incentives exist under the guise of economic development, but simply enhance a specific company's bottom line without any increase in employment, wages, or benefits. A psychological boost to certain industries may be all that decisionmakers in the state are seeking from economic development, particularly if there is an expectation that these industries will encourage formation of related companies.

As economic development plans take shape, there is an opportunity for a state university system to make contributions, such as through research that offers commercial possibilities. A cooperative public-private partnership might take advantage of any patents or corporate spinoffs that such research develops. In contrast, regulations that require stringent controls can discourage innovation and cross-germination of ideas between industry and the university system. Another concern is that overattention to certain fields of study may result in the equivalent of an industrial policy that attempts

to guess the hot new field of the future. Traditional education, with its long-term benefits, also may suffer if the state's focus narrows to potential benefits predicted from focusing on a particular field of study. These issues most likely will come under study as the Board of Regents and others work toward a Montana economic development model.

State government generally does not operate like a business. Balancing how public resources, including taxes, are invested or how tax incentives are allocated and deciding where and what types of infrastructure may benefit the state requires an understanding of how certain incentives might feed or starve the chicken or nurture or chill the egg. Cost-benefit analyses obviously help in these decisions. But the first goal is figuring out what the goal is.



## INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,  
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL BLDG.

### FEBRUARY

February 13, Revenue and Transportation Committee, Room 102, 9 a.m.

### MARCH

March 4, Law and Justice Committee

March 5, State-Tribal Relations Committee, Room 137, 9 a.m.

March 9, Environmental Quality Council, Energy Policy Subcommittee, Room 137

March 9, Environmental Quality Council, Agency Oversight Subcommittee, Room 102

March 9 and 10, Environmental Quality Council, Room 102

March 11, Economic Affairs Committee, Room 137

March 12, Legislative Finance Committee

March 23, Legislative Audit Committee, Room 102

March 24, Postsecondary Education Policy and Budget Subcommittee

March 25, SJR 32 Subcommittee on Medical Liability Insurance

March 25 and 26, Children, Families, Health, and Human Services

### APRIL

April 2, Local Government Subcommittee

April 2, K-12 Education Subcommittee

April 30, Revenue and Transportation Committee